

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MALIBU MEDIA, LLC,

Plaintiff,

v.

JOHN DOE,

Defendant.

Case No. 2:13-cv-11432-GAD-RSW

Assigned to: Hon. Gershwin A. Drain
United States District Judge

Referred to: Hon. R. Steven Whalen
United States Magistrate Judge

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NOTICE OF SUPPLEMENTAL AUTHORITY

NOTICE

Pending before this Court are plaintiff Malibu Media's motions to strike defendant's affirmative defenses (ECF No. 41) and to dismiss defendant's counterclaim (ECF No. 42). Both of these motions, which the parties previously agreed are likely to substantially affect the scope of discovery (ECF No. 40, p. 3), are fully briefed before this Court and awaiting decision.

On June 9, 2014, Hon. Matthew F. Kennelly, U.S. District Judge for the Northern District of Illinois decided essentially identical motions brought by Malibu Media in a case pending there. The motions decided by Judge Kennelly involve the same issues because Malibu sought there to strike the same affirmative defenses pled by the same undersigned defense counsel Pietz. The arguments made by the Doe defendant in Illinois in the opposition to Malibu's motions to strike and dismiss the counterclaim were the same arguments made by Doe here (via the same counsel).

Notably, these motions, both in Illinois as here, present a novel question of law: whether a violation of 18 U.S.C. § 2257¹ can serve as the basis for an unclean hands defense, an affirmative, equitable defense to copyright infringement. On this issue, Judge Kennelly agreed with Doe, denying Malibu's motion to strike as to the unclean hands defense. Judge Kennelly's order is attached hereto as Exhibit 1.

¹ Section 2257 is a felony criminal statute that mandates certain notice and record keeping requirements applicable to producers of sexually explicit content.

Respectfully submitted,
DATED: June 10, 2014

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CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing paper with the Clerk of the Court using ECF, which will send notification of such filing to all attorneys of record.

/s/ Morgan E. Pietz
Morgan E. Pietz

DATED: June 10, 2014